IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

WEDNESDAY, THE 7TH MARCH 2007 / 16TH PHALGUNA 1928

Con.Case(C).No. 1532 of 2006(S)

AGAINST THE JUDGEMENT/ORDER IN WPC.37621/2004

PETITIONER/PETITIONER IN WP(C):

P.K.M.KUTTY HAJI,
S/O.KUNHALASSAN, AGED 66 YEARS,
A.C.BAZAR, MOONNIYOOR POST, MALAPPURAM DIST.

BY ADV. SRI.P.K.SURESH KUMAR
SRI.K.P.SUDHEER

RESPONDENTS: RESPONDENT IN WP(C):

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1. B.M.JAMAL,
(FATHER'S NAME AND AGED NOT KNOWN)
CHIEF EXECUTIVE OFFICER, THE KERALA WAKF BOARD,
V.I.P. ROAD, KALOOR, KOCHI-682017.

2. K.V.KUNHIMOHAMMED HAJI,
(FATHER'S NAME AND AGED NOT KNOWN)
SECRETARY, MOONNIYOOR ODUNGATTUCHINA JAMA-ATH
PALLI MAHAL COMMITTEE, P.O.MOONNIYOOR,
MALAPPURAM DISTRICT, PIN- 676 311.

BY ADV. SRI.A.A.ABDUL HASSAN(SC WAKF BOARD)
SRI.P.A.ABDUL JABBAR, SC, WAKF BOARD
SRI.K.P.MAJEED
SMT.ISHA
SRI.P.ANOOP (MULAVANA)

THIS CONTEMPT OF COURT CASE (CIVIL) HAVING BEEN FINALLY HEARD **ON 07/03/2007,** THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

V. RAMKUMAR, J.

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C.C.C. NO. 1532 of 2006

in

W.P.(C) No. 37621 of 2004 D

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Dated, this the 7th day of March 2007

JUDGMENT

This Contempt of Court Case is filed by a by a member of Odungattuchira Muslim Jama-ath Palli. He was the petitioner in W.P.C. 37621/04. In the said Writ Petition he wanted the Kerala Wakf Board and Secretary of the Mahal to be interdicted from constructing any building in the property in question admeasuring 2.70 acres alleging that it is a public Wakf and used as a "khabaristhan" where no buildings could be constructed. The said Writ Petition was disposed of on 28-12-2004 at the stage of admission after hearing the Standing Counsel for the Kerala Wakf Board directing the Kerala Wakf Board to dispose of O.P. 122/04 filed by the petitioner on 7-7-2004 and until then not to effect any construction in the property. The contention of the petitioner is that it is a burrial ground belonging the mahal and no constructions can be permitted in such a burrial ground. The contention of the

petitioner is that it is a burrial ground belonging the mahal and no constructions can be permitted in such a burrial ground. The case of the petitioner is that O.P. 122/04 before the Wakf Board is kept pending endlessly and while so the 2nd respondent has in gross violation of the interdict in Annexure A3 judgment dated 28-12-2004 proceeded with the construction and the same amounts to civil contempt.

2. Respondents on the other hand would allege that it is the petitioner who has been dodging in the disposal of O.P. 122/04 and that after Annexure A3 judgment the construction was not proceeded with further in deference to the directions of this Court.

3. The question as to whether the petitioner can interdict the respondents from allowing the construction in question in the property referred to above depends on the final outcome of the O.P. 122/04. If it is ultimately found that the contention of the petitioner is well founded, then only he can successfully prevent any construction in the property in question. Even if some construction has been effected in the property, in the absence of

any material to show that there was absolutely no construction in the property as on the date of disposal of W.P.C. 37621/04, it will be unsafe to hold that the construction, if any, found in the property was effected after the judgment in W.P.(C) 37621/04 and in gross violation thereof. The learned counsel appearing for respondents 1 and 2, however, agreed that if ultimately O.P. 122/04 filed by the petitioner is decided in his favour whatever construction in the property will have to be demolished. It is admitted by all sides that O.P. 122/04 now stands posted on 19-4-2007. Since the petitioner is disputing the allegation that he has been dodging the disposal of the said O.P., the petitioner cannot be heard to say that he will not co-operate with the with further progress of the said O.P. Respondents also cannot indulge in any dilatory tactics with a view to protract the disposal of O.P. 122/04 on the final outcome of which rests the question as to whether any construction could be allowed in the property in question.

This contempt Petition is accordingly closed directing the first respondent to take up for consideration O.P. 122/04

peremptorily on 19-4-2007. The petitioner shall be ready with all evidence on that date. In case, the evidence is not over on that day, it shall be taken up for enquiry on the succeeding dates . The O.P. shall be taken up for evidence on a day-to-day basis either in Kozhikode Camp or at Ernakulam. The entire case shall be disposed of by the end of May 2007 positively. It is needless to say that if ultimately O.P. 122/04 is disposed of accepting the contentions of the petitioner, construction if any in the property shall be liable to be demolished in which case no equities shall be claimed by the 2nd respondent.

V. RAMKUMAR,

(JUDGE)

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